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July 6, 2000

2377.001

By Hand

Ms. Magalie Roman Salas
Federal Communications Commission
The Portals
445 12th Street S.W.
Washington, DC 20554

RE: CS Docket: 00-96
In re: Implementation of the Satellite Home Viewer Improvement Act of 1999 / Broadcast Signal Carriage Issues

Dear Ms. Salas:

On behalf of the five television licensees comprising Christian Television Network, enclosed please find the original and four (4) copies of Joint Comments for filing in the above captioned docket. In compliance with Commission directives, comments have also been submitted on diskette to Ben Golant in the Cable Services Bureau and to the Commission's copy contractor.

Please direct any questions you may have to the undersigned.

Yours truly,

Joseph C. Chautin, III

JCC,III:dbg
Encls

cc: Wayne Wetzel (w/encl)
William Anderson (w/encl)
David C. Gibbs, III (w/encl)
Virginia Smith (w/encl)
Jimmy Oliver (w/encl)
Jack Jarvis (w/encl)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Satellite Home	)	
Viewer Improvement Act of 1999	)	CS Docket No. 00-96
	)	
Broadcast Signal Carriage Issues	)	

JOINT COMMENTS OF
Christian Television Corporation, Inc.
Christian Television of Pensacola/Mobile, Inc.
Christian Television of Palm Beach County, Inc.
West Coast Christian Television, Inc.
Christian Television Network, Inc.[1]

The above listed entities, hereinafter referred to collectively as Christian Television Network ("CTN"), hereby submit comments in response to the Federal Communications Commissions' Notice of Proposed Rule Making (the "NPRM") in the above captioned proceeding.[2] The CTN stations are small, independent operations that rely heavily upon the FCC's mandatory carriage requirements in the cable context, and expect to do the same in the satellite carrier context. These comments are therefore directed at making satellite must-carry procedures fair for the smaller, independent

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[1] Each of the Joint Commenters is a licensee of a commercial television station in the communities indicated, as follows:

Christian Television Corporation, Inc.	WCLF-TV 22, Clearwater, FL
Christian Television of Pensacola/Mobile, Inc.	WHBR-TV 33, Pensacola, FL
Christian Television of Palm Beach County, Inc.	WFGC-TV 61, Palm Beach, FL
West Coast Christian Television, Inc.	WRXY-TV 49, Tice, FL
Christian Television Network, Inc.	WHTN-TV 39, Murfreesboro, TN

[2] *Notice of Proposed Rulemaking*, CS Docket 00-96, (released June 9, 2000).

television station that does not necessarily have the resources, physical plant and financial foundation of the typical major network affiliate station in a television market.

Carriage Obligations and Definitions

CTN strongly urges the FCC to adopt a rule requiring satellite carriers to notify local broadcast television stations of their carriage rights. This requirement should commence upon the carriage of any local station in the market – whether such carriage is pursuant to the statutory license or is privately negotiated.

In the case of carriage pursuant to statutory license, the notice, in writing, should be sent within 10 days of the carrier's commencement of carriage of a least one local television station. The notice should be sent by certified mail, return receipt requested, and should contain the following information, at a minimum: (a) name and address of satellite carrier; (b) name, phone number and email address of contact person; (c) name, phone number and email address of contact for technical matters; (d) name of station(s) being carried pursuant to the statutory license; (e) notice of eligibility of station for carriage; (f) location of local receive facility; (g) detailed, technical description of means by which signal delivery can be accomplished; (h) address to which a notice by the television station should be sent requesting carriage.

If, instead of carrying a local station pursuant to the statutory license, a carrier has privately negotiated a copyright agreement with that local station, the carrier should be required to notify all local broadcast stations, in writing sent by certified mail, no later than January 1, 2002 that its local station carriage is not pursuant to the statutory license, and that therefore other local stations are not eligible to request carriage on the carrier's

system. In the event that status changes at any time after January 1, 2002, the carrier should follow the procedures set forth above for carriage notices under the statutory license.

The current three-year "election" cycle for cable companies should not be used for satellite carriers.[3] Rights to carriage on satellite carriers can only be determined based on an affirmative notice from the carrier that it is carrying a local station under the statutory license. Thus, requiring television stations to periodically blindly "elect" carriage against a carrier without first knowing whether the carrier is carrying other local stations under the statutory license would be futile.

Accordingly, for satellite carriers, a carriage request provided in response to the required carrier "notice" should remain valid as to that satellite carrier, without a requirement that carriage by "re-elected" periodically. In the cable context, such "re-elections" are appropriate largely because of cable channel capacity and line-up issues. But for satellite carriers, Congress did not impose a limit on the number of television stations to be carried. Nor did it establish, as it did for cable operators, a "one-third" percentage cap on the number of stations satellite carriers had to carry pursuant to the must-carry rules.[4] Satellite carriers are free from these carriage limits, and therefore the reasons for instituting a three-year election cycle are not present.

Instead, once a station requests carriage in response to a satellite carrier's notice,

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[3] 47 C.F.R. § 76.64(f)(2).

[4] 47 C.F.R. § 76.56(b)(2).

that request should remain valid until such time as the satellite carrier no longer carries a local station in the market under the statutory license. Adoption of this approach will also avoid a multitude of carriage complaints disputing whether written correspondence from a station is an "election" or a "request" for purposes of a complaint's timeliness, a matter that has been noted in the cable context and that results in a waiver of carriage rights for a three-year period barring some changed circumstance.[5]

CTN also maintains that there should be no time limit on when a station may request carriage in response to a satellite carrier's notice. Channel positioning and capacity do not impact a satellite carrier's must carry obligations, and therefore, a deadline for requesting such carriage would not serve the purpose that it did in the cable context. A station should simply be entitled to wait until a later date to send its request notice. In that situation, the FCC should require such a television station to provide the carrier with a written notice that carriage is not being requested at the time, but that the station reserves its right to request carriage at a later date. In this way, stations that are undergoing facility or ownership changes, or who must spend funds to obtain the necessary equipment to deliver a good quality signal, may preserve their right to request carriage at a later date.

Complaint procedures for failure to carry a station should mirror those currently in place for cable operators.[6] However, in the event a station is deemed not eligible for

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[5] See, e.g. Complaint of Shop at Home, Inc. against Armstrong Utilities, CSR-5257-M.

[6] See 47 C.F.R. §76.61.

carriage as a result of such a proceeding, the station's right to re-urge carriage should not be forfeited indefinitely. Instead, the station should be allowed to re-start the carriage request process in its sole discretion once appropriate remedial or other actions are taken.

Market Definitions

CTN agrees with the FCC's view that satellite carriers and cable operators be required to use the same annual Nielsen market publications so that both may rely on the same market definition, and thus have virtually the same carriage obligations. Using the same market definition will eliminate any disparities between carriers and operators, and will simplify the carriage election/request process for television stations. More important, assuming a satellite carrier opts for the statutory license, station viewers will not be penalized based on market differences for choosing either satellite or cable.

CTN submits that market modification proceedings should apply to satellite carriers. By entering a local television market under the statutory license, a satellite carrier is, in effect, acknowledging a station's DMA as its presumptive market and subjecting itself to changes in that market. Thus, if Nielsen changed the market boundaries, a satellite carrier would be subject to those changes. Similarly, if a station or satellite carrier concluded that certain communities should be added to or removed from a station's market, a market modification proceeding would be the appropriate mechanism to effect such changes. However, such market modifications should apply only to the particular satellite carrier or cable operator identified in the modification proceeding. In other words, if a cable operator initiated a market modification

proceeding to eliminate communities from a television station's market, the end result would not apply to the satellite carrier serving those same communities. If the communities were eliminated, only the cable operator, but not the satellite carrier, serving the communities in question could discontinue carriage of the station in those communities.

The FCC's authority to implement a market modification mechanism similar to Section 614(h) of the Communications Act derives from Congress' intent in adopting the SHVIA - that carriage requirements be comparable to those for cable systems. Not adopting such a mechanism would result in a confusing hodgepodge of carriage obligations in markets, and place satellite carriers and cable operators on unequal competitive footing.

Good Quality Signal Delivery

The definition of "good quality signal" in the satellite carrier context should not mirror the definition of the same phrase used in the cable rules.[7] Unlike a cable operator that must designate one of its headends as "principal" for purposes of designating those points where television signal strength can be measured, satellite carriers will likely have only one point - the local receive facility ("LRF") - designated as the television signal reception point. And Section 338 (b)(1) of the Act leaves entirely up to the satellite carrier where such a LRF can be located within the DMA. The only restriction on LRF location is that it must be "in each local market" - i.e., in the DMA. That discretion poses

[7] See 47 C.F.R. § 76.55(c)(3).

a significant risk that the ultimate location of an LRF will potentially jeopardize carriage rights of stations based on off-air signal strength. There is also the potential for a satellite carrier to designate another facility – one that may not be in the DMA at all – as the receive point for local stations. In that instance, pending agreement among at least one-half of the stations requesting carriage, none of the stations would be able to deliver an off-air signal of -45 dBm (UHF) or -49 dBm (VHF) to the facility. For these reasons, CTN submits that the phrase "good quality signal" should have a different meaning for satellite carriers.

In the satellite carrier context, the definition of what constitutes "good quality" should not be linked to off-air signal strength measured at an arbitrary point, or at a point where it is impossible to receive such a signal. Instead, the definition of good quality should turn on the quality of the picture as delivered by any means (not just off-air) to the LRF or other facility – including by satellite, phone line, fiber optics or other terrestrial relay. Any method that will deliver video and audio signals that are viewable, audible and able to be processed by the satellite carrier should constitute a signal of good quality.

To avoid arbitrary placement of LRFs, adoption of rules restricting where LRFs can be located within a local market, i.e., at or near the center of a DMA, may be appropriate. To the extent a satellite carrier uses a non-local receive facility (i.e., a regional LRF encompassing several DMAs), appropriate rules should be adopted to mandate cost-sharing between the satellite carrier and the stations involved for purchase or use of equipment necessary to deliver signals to the appropriate location. Stations that fall in the minority of those agreeing to a non-local receive facility location should retain

full rights to file a complaint at the FCC objecting to same.

Carriage of Digital Television Signals

So as not to create disparity among satellite carriers and cable operators, the same obligations that are placed upon cable operators to carry digital television signals should apply to satellite carriers. Mandatory carriage of digital television signals during the transition period before return of analog spectrum will hasten the public's acceptance of digital television and provide an incentive to television stations to fully use the digital spectrum allotted. Mandatory carriage of digital television signals during the transition period will also increase the likelihood that market-based threshold conditions will be met for the return of analog spectrum in 2006.

Remedies

CTN interprets Section 338(a)(2) as providing the exclusive remedy and forum *with respect to copyright infringement actions* arising out of actions by satellite carriers. This provision of the Act gives local broadcasters a right, to be exercised in the broadcaster's sole discretion, to sue in federal court for copyright infringement when a satellite carrier is carrying other stations in the local market, but not the broadcaster's station. In CTN's view, however, this provision does not mean that a broadcaster's only remedy for non-carriage of its station is to file suit for copyright infringement in federal court. Rather, it means that if the broadcaster wishes to sue the satellite carrier for copyright infringement, it may do so. All other remedies are preserved.

The Joint Explanatory Statement of the Committee of Conference bears out this view. In explaining the scope of Section 338(a)(2)'s remedy provision, the Committee

stated ". . . the Copyright Act enables a local television station that is not being carried by a satellite carrier in violation of the license to file a copyright infringement lawsuit in federal court to enforce its rights."[8] That right to sue is embodied in Section 501(f)(2) of the Copyright Act, which clearly provides that such a station may file a civil action for copyright infringement to enforce its rights under Section 338(a) of the Communications Act.

Given this context, the use of the term "exclusively" in Section 338(a)(2) should be read narrowly as referring to the "exclusive" remedy for copyright infringement, rather than as applying to exclude any other remedial action available to a broadcaster. All that Section 338(a)(2) says is that if a broadcaster wants to sue for copyright infringement, it is allowed to, and if it does, it must do so under the Copyright Act in federal court. If on the other hand a broadcaster wants to enforce its rights to carriage by means other than a copyright infringement suit, it has full discretion to file a complaint at the FCC seeking enforcement of those rights. It is therefore overly restrictive to interpret Section 338(a)(2) as limiting a broadcaster's ability to file a complaint, when all that Section does is provide an optional and discretionary remedy in the form of a copyright infringement suit. Thus, while the Commission may not be the statutory venue for copyright infringement actions that seek to remedy non-carriage of a broadcast station's signal by satellite carriers, it can be and is the proper forum for any complaint by such a station that seeks to enforce carriage rights under Section 338.

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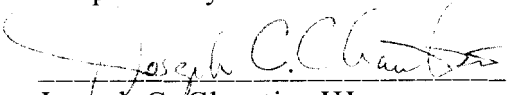
[8] Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong., 145 Cong. Rec. at H11795 (daily ed. Nov. 9, 1999).

Under the narrow interpretation of Section 338(a)(2) above, CTN maintains that Section 501(f)'s remedial limitation for copyright actions specified in Section 338(a)(2) has no impact whatsoever on the complaint process set out in Section 338(f). A broadcast station not being carried by a satellite carrier as required under Section 338(a) should not be limited to filing a copyright infringement suit to enforce its carriage rights -- it should also be entitled to file a complaint at the FCC to enforce those rights. The same logic applies under Section 338(b) – if a satellite carrier refused to carry a broadcast station for signal quality reasons, a broadcaster could file a complaint at the Commission to enforce its rights. In addition, however, the same broadcaster could file a copyright infringement suit in federal district court for damages resulting from the satellite carrier's failure to carry its signal. The two remedial actions – a complaint and a copyright infringement suit, are not mutually exclusive. They are both available under either Section 338 (a) or (b).

Conclusion

CTN respectfully submits these comments for consideration by the FCC in its adoption of rules mandating carriage of local television signals by satellite carriers.

Respectfully Submitted:



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July 7, 2000